IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.994 OF 2013

Sanjay s/o Krishna Jangam,
Age : 45 years, Occ.: Service,
R/o : Nalanda Society, Building No. 5,
Room No. 103, Pushpa Park,
Malad (East), Mumbai. …. Appellant
(Original accused)

Vs.

The State of Maharashtra …. Respondent

Mr. Vaibhav G. Bagade for the Appellant.

Mr. S.S. Pednekar, APP for the State

Coram : Smt. Sadhana S. Jadhav, J.
Date : 7th August 2019

JUDGMENT :

1. Heard the respective Counsel.

2. The appellant/original accused herein is convicted for the offences punishable under Sections 7 and 13 (1)(d) read with 13(2) of Prevention of Corruption Act, 1988 (for short "PC Act"), by the learned Special Judge (Under PC Act), Greater Bombay in Special Case No.89 of 2012 vide judgment and order dated 2nd August 2013.

The appellant is sentenced to suffer rigorous imprisonment for one year and fine of Rs.10,000/- and in default to suffer rigorous imprisonment for one month separately and both the sentences shall run concurrently. Hence, this appeal.

3. Such of the facts necessary for the decision of this appeal are as follows :

The appellant herein was working as "Junior Overseer" in K-South Ward in the office of Mumbai Municipal Corporation in the year 2011. The duties assigned to him were to inspect water storage within the prescribed area. The complainant i.e. Santoshkumar Tiwari was working as Legal Advisor and Property Manager in Royal Security Force, Jogeshwari, Mumbai. His office was situated within the jurisdiction of the appellant.

4. It is alleged by the prosecution that sometime in third week of November 2011, the appellant/accused had been to the office of Mr. Santoshkumar Tiwari, the complainant. He was not

present in the office and therefore, the appellant had left his cellphone number and a message that Mr. Tiwari shall contact him at the earliest. On 9th December 2011 also, the appellant-accused had re-visited the office of Mr. Tiwari but at that time also he was not present. The appellant-accused met Mr. Tiwari on 12th December 2011 and introduced himself for the first time as Inspector, working in Health Department of K-Ward and informed him *orally* that the cover installed on the drainage of his office is not, as per rules, and therefore he would be liable for a penal action and that if he wanted to save himself from the penal action, he should pay gratification of Rs.10,000/- to him. Mr. Tiwari had expressed his inability to pay him on the very same day.

5. Mr. Tiwari had then informed his employer about the gratification demanded by the appellant. His employer had refused to shell out any gratification for the Municipal officer and hence, on 13th December 2011, Mr. Tiwari had approached the office of Anti Corruption Bureau and set the law into motion.

6. Police Inspector, Mrs. Raul had then decided to verify the demand and therefore she had called independent witnesses to her office and shown them the copy of the complaint, apprised them of the same. She had then called upon the complainant to make a telephonic call to the appellant and requested the panchas to verify the conversation between the complainant and appellant and upon instructions, the complainant had kept the cellphone on speaker mode. In the course of said conversation, the appellant had informed the complainant that he would re-visit his office on the next date. The said verification panchanama is at Exhibit '14'.

7. On 14th December 2011, the complainant, alongwith independent witnesses, had been to the office of the complainant. The appellant was already present in the office of the complainant. The complainant was then armed with a digital recorder, which was switched on. One of the panch, Mr. Salunke had accompanied the complainant. It appears that on 14th December 2011, the appellant had agreed to accept Rs.1,000/- on the next day.

8. On the basis of the recorded conversation, PI, Mrs. Raul had registered Crime No.59 of 2011 against the appellant/accused for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 and had decided to lay a trap on 15th December 2011. Accordingly, trap was laid. The appellant had re-visited office of the complainant, alongwith tainted amount, two panchas and the members of raiding party. The pre-trap panchanama was recorded. The complainant had followed the directions of PI, Mrs. Raul. The amount was accepted by the appellant-accused in the cabin of the complainant. Soon thereafter, the complainant had given pre-determined signal and the entire raiding party had entered into the cabin. In presence of the appellant-accused, the complainant had disclosed to the raiding party that on demand the tainted amount was accepted by the appellant, which he kept in his wallet and the same was placed in the back pocket of his pant. Panch Warulkar had drawn the wallet from back pocket of the pant. Traces of anthracene powder were found on the tainted currency notes and on all the

fingers and palms of both the hands of the appellant as well as on the inner portion of right side pocket of his pant. Thereafter the post-trap panchanama was conducted in accordance with law. Section 13(1)(d) and 13(2) of the Prevention of Corruption Act were then added and after obtaining sanction for prosecution, the charge-sheet was filed.

9. Learned counsel for the appellant has vehemently argued that the original digital voice recorder, on which the conversation was recorded was never placed before the Court and therefore it is not found in the list of muddemal articles. The learned counsel has vehemently argued that in these circumstances the conversation between the complainant and the appellant is not an admissible evidence. In the absence of the original Secure Digital Card (S.D.Card), on which the verification was recorded, there is no proof of demand and hence the accused cannot be convicted under the provisions of the Prevention of Corruption Act.

10. The prosecution has examined as many as four witnesses in order to prove the guilt of the appellant-accused. The appellant has also filed written statement under Section 313 Sub-clause 2 of Code of Criminal Procedure. PW 1 Santoshkumar Markanday Tiwari (Exhibit 9) has deposed in consonance with the first complaint made before Anti Corruption Bureau on 13th December 2011. That initially there was a demand of Rs.10,000/-. PW-1,Tiwari had informed the appellant that he would be unable to pay the amount as agreed and that he would pay Rs.1,000/- on the next day i.e. on 15th December 2011 and the remainder amount of Rs.9,000/- subsequently. The request of the complainant was considered. According to PW-1, on that day also, the appellant had stated that he is taking minimum amount from Mr. Tiwari. On the basis of the statement of the complainant and the verification of voices on the digital recorder, PI Mrs. Prabha Raul had registered an offence under Section 7 of Prevention of Corruption Act after recording the statement of Mr. Tiwari and the same is marked at Exhibit 11. He has reiterated the events that had taken place on 15th December 2011. He had

informed the raiding party that he had parted with the amount of Rs.1,000/- in favour of the appellant which he had accepted and kept in his wallet and the said wallet was placed in his pant pocket.

11. Learned counsel for the appellant has vehemently argued that the panch, Warulkar has not been examined by the prosecution and therefore there is no evidence to the effect that the amount was voluntarily accepted by the appellant and placed in his wallet and that the wallet was removed from the pant pocket of the appellant and therefore according to the learned counsel, the appellant deserves to be acquitted. In the cross-examination, PW-1 has specifically denied that the accused-appellant had intermittently reminded the staff of his office to cover drainage properly. Rest of the suggestions are denied. PW-1 has proved the contents of Exhibit 10 as well as Exhibit 11.

12. PW-2, Chetan Vitthal Salunke had acted as one of the panchas on 13^{th}, 14^{th} and 15^{th} December 2011. According to him, on

15th December 2011 also he had accompanied the other panch and the complainant to the office of the complainant. In the cross-examination, it is elicited that after the raid, upon enquiry, the appellant-accused had disclosed that he had kept the accepted amount in his money purse, which he kept in the backside right pocket of his pant. Thereafter Warulkar had drawn the money purse from the backside right pocket of the pant of the accused. There was re-examination of PW-2 by the prosecution, in which he has proved pre-trap panchanama as well as post-trap panchanama. In the cross-examination, it is elicited that while hearing the conversation recorded on digital recorder, PW-2 had not found discussion in respect of charges and receipt in recorded conversation. He has categorically stated in the cross-examination that he had found that there was conversation about demand of the amount. There is irrelevant admission to the effect that no traces of anthracene powder were found on any of the articles.

13. Learned counsel for the appellant has harped upon this admission but it is of no avail, in view of the defence of the appellant.

14. PW-3, Suresh Anandrao Pawar was working as Pest Controller Officer in “K-West Ward” of Municipal Corporation at Andheri. According to him, the appellant was assigned the duties of inspecting water storage in the ward, in order to control diseases like dengue and malaria. It was his duty to report any incontingencies in respect of water tank, fountains, swimming pool and any kind of water storage and only after receipt of report used to issue notice to the concerned for rectifying the defects and in the eventuality, the defects are not rectified, there used to be second inspection through Junior Overseer and inspection report had to be filed and if it is reported that defects are rectified, the file was closed. He has categorically stated that he had not received any inspection report from the appellant in respect of any defects in the water storage about drainage of the complainant. That Junior Overseers are not authorised to collect any amount from the concerned for insecticide

treatment except issuance of a notice to the concerned. Needless to reiterate that the complainant had not received any notice either from PW-3 or from the appellant.

15. In the cross-examination also, PW-3 has specifically stated that the employees of the M.M.C. are not authorised to impose fine if mosquito-proof cover is not installed on the fibre object water tank and that fine can be imposed to the extent of Rs.2,000/- only by the Court. It is elicited that the notice of non-compliance was issued to Royal Security Forces in the year 2012, however, the incident of demand and acceptance is of 15th December 2011.

16. PW-4 is the Investigating Officer, Mrs. Prabha Sakharam Raul. She has proved pre-trap panchanama, the recording of conversation between the complainant and the appellant on digital voice recorder, post-trap panchanama and all other relevant documents. According to her, on verification of demand made by the appellant, Crime No.59 of 2011 was registered against the appellant for the offence punishable under Section 7 of the Prevention of

Corruption Act and subsequently on 15th December 2011, only after acceptance, the offence under Section 13(1)(d) read with 13(2) was added.

17. It is pertinent to note that although the original digital recorder is not filed on record, the certificate is issued by Additional Commissioner of Police, A.C.B. under Section 65(B) of the Information Technology Act. Moreover, the voice samples of the concerned were taken and sent to the Director of Forensic Science Laboratory.

18. It is the contention of the learned counsel for the appellant that the forensic report was not received during trial. It would be most relevant to revert to the defence of the accused in the present case. There is no denial of telephonic conversation. In his statement under Section 313 Sub-clause (2) of Cr.P.C., the appellant has admitted that he had visited the office of the complainant on 15th December 2011, there was a discussion about the covering of

drainage. The complainant had informed him that the said building is going into redevelopment. That there was further discussion about sprinkling of pesticides and that he had explained to the complainant the procedure”. The appellant has specifically stated as follows :

> “Suddenly the complainant took out some amount from his person and tried to give me. I did not accept the same, therefore he had kept the same on the table in front of me. It was his contention that the said work should be complied by B.M.C. by accepting the said amount. I innocently took that amount by my left hand and by taking it in right hand passed towards the complainant. Immediately the complainant went towards the door and within the spur of moment, some persons had accosted me. Subsequently, I learnt that they were the officers of A.C.B”.

The acceptance indeed is proved. In fact the investigating officer had rightly registered the offence under Section 7 of the Prevention of Corruption Act. Section 7(a) and (b) read as follows :

> “**7. Offence relating to public servant being bribed**.--
> Any public servant who, –
> (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself

> or by another public servant; or
>
> (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or.

In fact, on 14th December 2011, there was an attempt to obtain the said amount and on 15th December 2011, the appellant had actually accepted the amount. He has also admitted to have accepted the amount innocently. It is a half hearted defence.

19. Section 20 of the Prevention of Corruption Act reads as follows :

> "**20. Presumption where public servant accepts any undue advantage.—**
> Where, in any trial of an offence punishable under Section 7 or under Section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under Section 7 for performing or to cause

> performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under Section 11."

In fact, there is neither rebuttal of presumption nor the appellant has demonstrated any preponderance of probabilities to rebut the said mandatory presumption under Section 20 of the P.C. Act. The appellant had no reason to visit the office of the complainant on two occasions. Although digital video recorder i.e. the apparatus is not on record, the very fact that the appellant had visited the office of the complainant on 14th and as agreed, had re-visited on 15th December 2011, that is when the trap was laid is more than sufficient to infer that the appellant had demanded gratification on 14th December 2011 and had accepted the same on 15th December 2011.

20. Even taking into consideration that there are certain lacunae in the investigation or in the prosecution, the Court has to be guarded in view of presumption under Section 20 of the P.C. Act. and after taking into consideration the conduct of the appellant coupled

with his statement under Section 313 Sub-clause 2 of Cr.P.C., it is more than clear that the amount demanded on 14th was accepted by the appellant on 15th in the cabin of the complainant- PW1.

21. This Court in the judgment dated 5th March 2015 passed in Criminal Appeal No. 387 of 2000 has held that:

> "It is the duty of the Court to ascertain from the evidence as to whether the evidence is sufficient to prove the demand and acceptance of illegal gratification".

22. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Apex Court in the case of Anvar P.V. Vs. P.K. Bashir and others, reported in 2014 DGLS (SC) page 783, which pertains to the necessity of proving the contents of the electronic records and therefore the same would not be relevant in this case after considering the defence of the accused, where he admits to have accepted the said amount. In the eventuality that the acceptance is admitted, the onus would lie upon the accused to demonstrate that the same was not in the form of illegal gratification.

23. In view of above discussion, it can be safely inferred that the prosecution has proved the guilt of the accused beyond reasonable doubt. Hence, the following order :

O R D E R

I) The appeal is dismissed.

II) The appellant to surrender his bail bond on/or before 7th September 2019 and shall surrender himself to the custody of the Special Judge (Prevention of Corruption Act), Greater Mumbai.

(*Smt. Sadhana S. Jadhav*, J)